

ESTTA Tracking number: **ESTTA579530**

Filing date: **12/31/2013**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	ER Marks, Inc. - QVC, Inc.
Granted to Date of previous extension	01/01/2014
Address	3411 Silverside Road Wilmington, DE 19810 UNITED STATES
Attorney information	Sean W. Dwyer QVC, Inc. 1200 Wilson Drive West Chester, PA 19380 UNITED STATES sean.dwyer@qvc.com Phone:484-701-6286

Applicant Information

Application No	85921638	Publication date	09/03/2013
Opposition Filing Date	12/31/2013	Opposition Period Ends	01/01/2014
Applicant	Jagrup, Alan Apt. B1 Brooklyn, NY 11219 USX		

Goods/Services Affected by Opposition

Class 035. First Use: 2012/06/01 First Use In Commerce: 2012/06/01 All goods and services in the class are opposed, namely: Operating on-line marketplaces for sellers and buyers of goods and/or services; Business services in the nature of intellectual property claims management, namely, processing and administration of claims of intellectual property owners against third party sellers; Providing an online searchable database featuring the ratings, reviews and recommendations on products and services for commercial purposes posted by users; Advertising services

Applicant Information

Application No	85889749	Publication date	09/03/2013
Opposition Filing Date	12/31/2013	Opposition Period Ends	
Applicant	Jagrup, Alan Apt-B1 Brooklyn, NY 11219 USX		

Goods/Services Affected by Opposition

Class 035. First Use: 2011/06/01 First Use In Commerce: 2011/06/01
 All goods and services in the class are opposed, namely: Operating on-line marketplaces for sellers and buyers of goods and/or services; Business services in the nature of intellectual property claims management, namely, processing and administration of claims of intellectual property owners against third party sellers; Providing an online searchable database featuring the ratings, reviews and recommendations on products and services for commercial purposes posted by users; Advertising services

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	3644792	Application Date	07/14/2008
Registration Date	06/23/2009	Foreign Priority Date	NONE
Word Mark	Q CHECK		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 035. First use: First Use: 2008/08/01 First Use In Commerce: 2008/08/01 home shopping services in the field of general merchandise by means of television, telephone and the internet		


U.S. Registration No.	1914291	Application Date	02/09/1993
Registration Date	08/22/1995	Foreign Priority Date	NONE
Word Mark	Q		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 042. First use: First Use: 1994/05/02 First Use In Commerce: 1994/05/02 providing at home shopping services in the field of general merchandise by means of television		

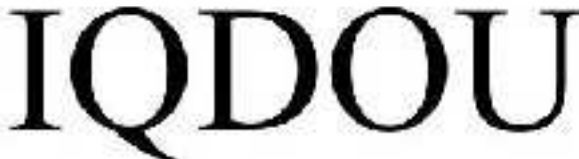
U.S. Registration No.	3508372	Application Date	02/29/2008
Registration Date	09/30/2008	Foreign Priority	NONE

		Date	
Word Mark	FIRST ON Q		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 035. First use: First Use: 2008/02/17 First Use In Commerce: 2008/02/17 home shopping services in the field of general merchandise by means of television, telephone and the internet		

U.S. Registration No.	3525384	Application Date	10/09/2007
Registration Date	10/28/2008	Foreign Priority Date	NONE
Word Mark	Q QVC		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 035. First use: First Use: 2008/07/30 First Use In Commerce: 2008/07/30 retail shopping services in the field of general merchandise by means of mobilephone and portable and hand-held digital and electronic devices		

U.S. Registration No.	3394771	Application Date	10/09/2007
Registration Date	03/11/2008	Foreign Priority Date	NONE
Word Mark	Q QVC		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 035. First use: First Use: 2007/09/24 First Use In Commerce: 2007/09/24 providing home shopping services in the field of general merchandise by means of television; retail store services available through interactive television featuring general merchandise; and retail shopping services in the field of general merchandise by means of the internet

U.S. Registration No.	3829970	Application Date	07/31/2007
Registration Date	08/10/2010	Foreign Priority Date	NONE
Word Mark	IQDOU		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 035. First use: First Use: 2007/09/05 First Use In Commerce: 2007/09/05 home shopping services in the field of general merchandise by means of television, telephone and the internet		

U.S. Registration No.	4410926	Application Date	02/26/2013
Registration Date	10/01/2013	Foreign Priority Date	NONE
Word Mark	DON'T JUST SHOP. Q.		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 035. First use: First Use: 2011/01/01 First Use In Commerce: 2011/01/01 Providing home shopping services in the field of general merchandise by means of television, internet, mobile phone and portable hand-held digital and electronic devices

U.S. Application/Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	Q, THE Q		
Goods/Services	Home shopping services, Online retail services		

Attachments	77521741#TMSN.jpeg(bytes) 77409504#TMSN.jpeg(bytes) 77299965#TMSN.jpeg(bytes) 77299729#TMSN.jpeg(bytes) 77242662#TMSN.jpeg(bytes) 85860157#TMSN.jpeg(bytes) 3430_001.pdf(384430 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Sean W. Dwyer/
Name	Sean W. Dwyer
Date	12/31/2013

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

ER Marks, Inc.
Delaware corporation,

Opposer,

v.

Serial No.: 85/921,638
85/889,749

Alan Jagrup
an individual

Applicant.

NOTICE OF OPPOSITION

In the matter of the application for registration of the mark "q design" and "macro Q" both for "operating on-line marketplaces for sellers and buyers of goods and/or services; business services in the nature of intellectual property claims management, namely, processing and administration of claims of intellectual property owners against third party sellers; providing an online searchable database featuring the ratings, reviews and recommendations on products and services for commercial purposes posted by users; advertising services" in International Class 35, Serial Nos. 85/921,638 and 85/889,749, filed May 2, 2013 and March 28, 2013 respectively and published for opposition in the Official Gazette of the United States Patent and Trademark Office September 3, 2013. The Applications were filed by Alan Jagrup ("Applicant"). ER Marks, Inc. ("Opposer") believes that it will be damaged by such registration, and hereby opposes the registration of Applicant's marks. The grounds for opposition are as follows:

1. Opposer ER Marks, Inc. ("ER Marks") is a corporation organized under the laws of the State of Delaware having its principal place of business at Suite 205B, Bancroft Building, Concord Plaza, 3411 Silverside Road, Wilmington, DE 19810.

2. QVC, Inc. ("QVC") is a corporation organized under the laws of the State of Delaware having its principal place of business at 1200 Wilson Drive, West Chester, PA 19380 and is the

principle licensee of Opposer ER Marks.

3. Since 1986, QVC has used the service mark QVC, alone and/or in combination with a design element, for providing at home shopping services in the field of general merchandise by means of television broadcasting, online and mobile retail services and by other means and in the advertising, marketing and rendering of such services in interstate commerce.

4. Since 1994, QVC has used the service mark Q for providing at home shopping services in the field of general merchandise by means of television broadcasting and in the advertising, marketing and rendering of such services in interstate commerce.

5. QVC is one of the leading electronic commerce retailers and the leading home shopping broadcasters in the United States and is well known among the general public and in the online retail industry.

6. From 1986 to the present, QVC's advertising and sales under the Q mark have been and are significant.

7. As a result of such substantial advertising and sales under the Q mark and the maintenance of premium quality standards relating thereto, said mark has become unique and is identified by the public solely with Opposer's online retail and broadcasting services. The Q mark has become famous and distinctive of Opposer.

8. By virtue of its efforts in advertising and sales under the Q mark, and the maintenance of premium quality standards relating thereto, said service mark has become well and favorably known to the general public and the online retail and broadcasting industries as a distinctive indication of the origin of the online retail and broadcasting services offered by Opposer.

9. Opposer duly registered the Q mark for providing at home shopping services in the field of general merchandise by means of television broadcasting, in International Class 42, in the USPTO under Registration No. 1,914,291, which issued on August 22, 1995.

10. On or about January 8, 2001, QVC assigned all of its rights, title and interest in the Q mark, the goodwill symbolized by this mark, and Registration No. 1,914,291, to ER Marks. The

deed of assignment was recorded in the USPTO and ER Marks, Inc. accordingly is the record owner of Registration No. 1,914,291 for the Q mark.

11. ER Marks and QVC have entered into a license agreement under which ER Marks granted QVC a license to use various marks owned by ER Marks including, but not limited to, the Q mark. By virtue of such license, ER Marks and QVC are related companies within the meaning of § 5 of the Lanham Act, 15 U.S.C. § 1065. Consequently, all use of the benefit of the Q mark by QVC inures to the benefit of ER Marks as a matter of law.

12. Registration No. 1,914,291 is prima facie evidence of the validity of the service mark shown therein and QVC's ownership thereof, and is constructive notice of ownership of the Q mark by QVC, all as provided by §§ 7(b) and 22 of the Lanham Act, 15 U.S.C. §§ 1057(b) and 1072. As Registration No. 1,512,144 has achieved incontestable status under § 15 of the Lanham Act, 15 U.S.C. § 1065, said registration is conclusive evidence of QVC's exclusive right to use the service mark Q in commerce.

13. In addition to the use and registration of the Q mark as described above, Registrant has used and obtained trademark registrations for a family of Q formative marks including but not limited to the following marks: Q CHECK, Reg. No. 3,644,792; FIRST ON Q, Reg. No. 3,508,372; Q QVC, Reg. No. 3,525,384; Q QVC, Reg. No. 3,394,771; and IQDOU, Reg. No. 3,829,970 and DON'T JUST SHOP. Q., Reg. No. 4,410,926 (hereinafter the "Q Marks").

14. Notwithstanding Opposer's well-known and prior exclusive rights in the Q Marks, and long after the Q Marks have become famous, Applicant filed application Serial Nos. 85/5921638 and 85/889,749, to register the Q design mark and macro Q mark for "operating on-line marketplaces for sellers and buyers of goods and/or services; business services in the nature of intellectual property claims management, namely, processing and administration of claims of intellectual property owners against third party sellers; providing an online searchable database featuring the ratings, reviews and recommendations on products and services for commercial purposes posted by users; advertising services" in International Class 35, on May 2, 2013 and September 3, 2013 respectively.

16. On information and belief, prior to and at the time Applicant filed its applications, Serial Nos. Nos.85/5921638 and 85/889,749, Applicant knew of Opposer's Q Mark and QVC's online retail and broadcasting services.

17. There is no issue as to priority. Applicant lists its dates of first use for its Q design mark as June 1, 2012 and its date of first use of its macro Q mark as June 1, 2011. Opposer's dates of first use are far earlier than those of Applicant.

18. The service marks proposed for registration by Applicant are substantially similar in appearance, sound, meaning and commercial impression to Opposer's Q Mark.

19. The service marks proposed for registration by Applicant are dominated by the letter Q, which is identical to QVC's Q Mark.

20. The service marks proposed for registration listed in Applicant's filings for, Q design and macro Q, are confusingly similar to Opposer's Q Mark.

21. The services to be rendered under Applicant's Q design mark comprise among other things, Applicant's retail services.

22. The services, as they are recited in Applicant's applications and Opposer's registrations, are related.

23. The conditions surrounding the marketing of the services, as they are recited in Applicant's applications and Opposer's registrations, are such that they could be encountered by the same purchasers under circumstances that could give rise to the mistaken belief that the services come from a common source.

24. If Applicant is permitted to use and register the Q design mark and macro Q mark for the services specified in the application herein opposed, confusion in trade resulting in damage and injury to Opposer would be caused and would result by reason of the similarity between the Applicant's marks and Opposer's Q Mark. In addition, any defect, objection or fault found with Applicant's services marketed under its Q design mark and macro Q mark would negatively reflect upon and seriously injure the reputation which Opposer has established for the services marketed under its Q Mark.

25. The service marks proposed for registration by Applicant, n a m e l y , Q design and macro Q, are likely to cause confusion, mistake or to deceive as to the source of origin of Applicant's services, contrary to 15 U.S.C. § 1052(d), by causing the consuming public to believe that Applicant's services under its Q design mark and macro Q mark are sponsored, licensed and/or otherwise approved by, or are in some way connected or affiliated with Opposer.

29. In addition, the service marks proposed for registration by Applicant, n a m e l y , Q design and macro Q, will injure Opposer in its business, reputation and goodwill by diluting, rendering less valuable, impairing and/or tarnishing the distinctive, unique and singular quality of Opposer's Q Mark, contrary to 15 U.S.C. §§ 1052 and 1125(c).

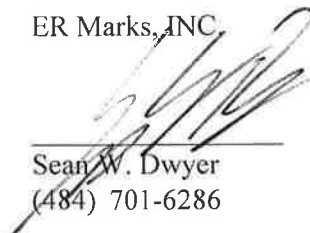
30. If the Applicant is granted registration of the applications herein opposed, it would thereby obtain at least a prima facie exclusive right to the use of its marks. Such registrations would be a source of damage and injury to Opposer.

WHEREFORE, Opposer prays that this Notice of Opposition be sustained in its favor, that Application Serial Nos. 85/921,638 and 85/889, herein opposed, be refused registration, and for such other and further relief as may be deemed to be just and proper.

Respectfully submitted,

Dated: December 31, 2013

ER Marks, INC.



Sean W. Dwyer
(484) 701-6286


Attorney for Opposer
ER Marks, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Notice of Opposition has been served by counsel for QVC, Inc. by mailing said copy on December 31, 2013 via first class mail, postage prepaid to:

Alan Jagrup
974 47th St. Apt. B1
Brooklyn, NY 11219-2831

alanjagrup@yahoo.com



Sean W. Dwyer

STATUS

DOCUMENTS

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Mark: MACRO Q

macro Q

US Serial Number: 85889749

Application Filing Date: Mar. 28, 2013

Register: Principal

Mark Type: Service Mark

Status: A request for an extension of time to file an opposition has been filed with the Trademark Trial and Appeal Board. For more information, see TTABVue on the Trademark Trial and Appeal Board web page.

Status Date: Sep. 13, 2013

Publication Date: Sep. 03, 2013

▼ Mark Information

Mark Literal Elements: MACRO Q

Standard Character Claim: Yes. The mark consists of standard characters without claim to any particular font style, size, or color.

Mark Drawing Type: 4 - STANDARD CHARACTER MARK

▼ Goods and Services

Note:

The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis ((...)) identify any goods/services not claimed in a Section 15 affidavit of incontestability;
- Asterisks *...* identify additional (new) wording in the goods/services.

For: Operating on-line marketplaces for sellers and buyers of goods and/or services; Business service claims management, namely, processing and administration of claims of intellectual property or trademarks; Providing an online searchable database featuring the ratings, reviews and recommendations of goods and services; Advertising services

International Class(es): 035 - Primary Class

U.S. Class(es): 100, 101, 102

Class Status: ACTIVE

Basis: 1(a)

First Use: Jun. 01, 2011

Use in Commerce: Jun. 01, 2011

▼ Basis Information (Case Level)

Filed Use: Yes

Currently Use: Yes

Filed ITU: No

Currently ITU: No

Filed 44D: No

Currently 44D: No

Filed 44E: No

Currently 44E: No

Filed 66A: No

Currently 66A: No

Filed No Basis: No

Currently No Basis: No

▲ Current Owner(s) Information**▲ Attorney/Correspondence Information****▲ Prosecution History****▲ TM Staff and Location Information****▲ Assignment Abstract Of Title Information - None recorded****▲ Proceedings - Click to Load**

STATUS

DOCUMENTS

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Mark: Q



US Serial Number: 85921638

Application Filing Date: May 02, 2013

Register: Principal

Mark Type: Service Mark

Status: A request for an extension of time to file an opposition has been filed with the Trademark Trial and Appeal Board. For more information, see TTABVue on the Trademark Trial and Appeal Board web page.

Status Date: Sep. 17, 2013

Publication Date: Sep. 03, 2013

▼ Mark Information

Mark Literal Elements: Q

Standard Character Claim: No

Mark Drawing Type: 3 - AN ILLUSTRATION DRAWING WHICH INCLUDES WORD(S)/ LETTER(S)/NUMBER(S)

Description of Mark: The mark consists of the stylized letter "Q" inside a square with rounded corners.

Color(s) Claimed: Color is not claimed as a feature of the mark.

Design Search Code(s): 26.09.02 - Squares, plain single line; Plain single line squares

▼ Goods and Services

Note:

The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis ((...)) identify any goods/services not claimed in a Section 15 affidavit of incontestability;
- Asterisks *...* identify additional (new) wording in the goods/services.

For: Operating on-line marketplaces for sellers and buyers of goods and/or services; Business service claims management, namely, processing and administration of claims of intellectual property or providing an online searchable database featuring the ratings, reviews and recommendations of users; Providing an online searchable database featuring the ratings, reviews and recommendations of users for purposes posted by users; Advertising services

International Class(es): 035 - Primary Class

U.S Class(es): 100, 101,

Class Status: ACTIVE

Basis: 1(a)

First Use: Jun. 01, 2012

Use in Commerce: Jun. 01, 2012

▼ **Basis Information (Case Level)**

Filed Use: Yes

Currently Use: Yes

Filed ITU: No

Currently ITU: No

Filed 44D: No

Currently 44D: No

Filed 44E: No

Currently 44E: No

Filed 66A: No

Currently 66A: No

Filed No Basis: No

Currently No Basis: No

▼ **Current Owner(s) Information**

Owner Name: Jagrup, Alan

Owner Address: Apt. B1
974 47th Street
Brooklyn, NEW YORK 11219
UNITED STATES

Legal Entity Type: INDIVIDUAL

Citizenship: UNITED STATES

▲ **Attorney/Correspondence Information**

▲ **Prosecution History**

▲ **TM Staff and Location Information**

▼ **Assignment Abstract Of Title Information - None recorded**

▲ **Proceedings**